



THE INTERIM

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LEGISLATIVE COUNCIL

Fiscal note work group to meet March 9... The Legislative Council has created a work group to look into how fiscal notes may be improved to provide adequate and timely information to the Legislature. The work group members are Rep. David Wanzenried (chair) and Rep. Michael Lange from the Legislative Council and Rep. Tim Callahan and Rep. John Sinrud from the Legislative Finance Committee. Jon Moe of the Legislative Fiscal Division is providing staff support. The work group's first meeting will be on Thursday, March 9 at 8:30 a.m. in Room 137 of the state Capitol.

Staff has surveyed legislators for comments and concerns regarding fiscal notes and has prepared background information for the meeting. The agenda and work group materials are on the Legislative Council webpage at: http://www.leg.state.mt.us/css/committees/administration/2005_2006/leg_council. Under "Committee Activities", click on "Fiscal Note Work Group". For more information about the work group, contact Jon Moe at jonmoe@mt.gov or (406) 444-4581.

Legislative Council to meet March 24... The Legislative Council will meet Friday, March 24 at 9 a.m. in Room 137 of the state Capitol. Tentative agenda items include consultation on a proposed property transfer; discussion on action items identified during the September planning session; selection of dates for the 2006 party caucuses, new legislator orientation, and continuing education program; and review of the budget preparation process for the Legislative Services Division. In addition, members will meet with representatives from the Canadian Consulate General.

For more information about the meeting, call Lois Menzies at (406) 444-3066 or send an email message to loismenzies@mt.gov.

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Committee hits the rule book... At its January meeting, the Children, Families, Health, and Human Services Committee reviewed Department of Public Health and Human Services proposed rules on licensure of day care facilities; immunization requirements; outpatient crisis response facilities; and foster care. The committee raised questions about the rule on licensure of day care facilities and its potential impact on before and after school programs. The department will provide the committee with responses to those questions. The department will also correct a form to reflect current law allowing an exemption from immunization for the Hib virus for day care. The committee objected to the adoption of foster care rules and will review the comments received by the department at the next meeting. The effect of the objection is to delay adoption of the rule for 6 months. This will give the committee time to understand the issues and take public comment. The committee took no action on the outpatient crisis response facilities license rules, which are expected to be adopted soon.

SJR 41 Study on Mental Health Crisis... The committee continues to work on the mental health crisis study. Joyce Daikons, DPHHS Addictive and Mental

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THE INTERIM is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.state.mt.us>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

A Publication of  **Legislative Services Division**

Disorders Division administrator, presented options that the division is working on with mental health groups as a part of the executive planning process. Representatives from Missoula and Helena talked about efforts at the local level to deal with a mental health crisis. Daikons also discussed a request for proposals that would provide funding for local communities to work on crisis response.

The committee also turned its attention to children's mental health services. Since its reorganization, the Children's Mental Health Bureau, DPHHS, has been developing a system of care and encouraging development of Kid's Management Authorities across the state. The committee has heard of the many problems facing families with children in mental health crisis and of the limits on emergency care and assistance. The committee is closely monitoring the interaction between and integration of adult and children's mental health services.

SJR 37 Study on Child Protective Services... Committee staff reported on the legal rights and responsibilities of family members in the child protective services system. At the March meeting the committee will concentrate on court-related issues. Workforce qualifications, training, recruitment and retention, licensure, standards, and accountability were discussed and will continue to be discussed. Representatives from the Children's Trust Fund and local prevention providers discussed prevention efforts around the state.

Committee to meet March 30 and 31... At the March meeting, the committee will consider the following topics: prosecution of child abuse cases, statistics on sexual abuse, concerns about abuse in licensed and unlicensed institutions that care for children, timelines in the child protection process, burdens of proof, and data on children in care because of drug involvement.

The committee will learn about the federal Child and Family Services Review and the Court Assessment Program, including information on timelines and court processes and prosecution. A panel of county attorneys, public defenders, the Child Protection Unit of the Department of Justice and other participants will provide additional insights.

The committee asked the Child and Family Services Division, DPHHS, to present its needs to the Committee. DPHHS has initiated a workload study of the division and will present results of the study as part of the needs assessment.

Additional topics that the committee will consider in March and the rest of the interim include:

- the House Bill 395 study on county commitment costs;
- hospital-related issues. Many hospitals do not have the capability to deal with mental health crises for adults or children. Emergency rooms do not have sufficient mental health training, and mental health professionals either will not or cannot take emergency calls.
- crisis issues. The committee is following up on ideas heard from ADD and others, such as 72-hour

- presumptive eligibility, secure crisis beds, incentives to communities, and certified peer support services.
- suicide. The committee requested more information on suicides in Montana, what data is collected and where the gaps are.
- parity for mental health in insurance coverage; and
- community involvement in crisis response.

Committee hosts economic success seminar in January... On January 25, the committee hosted a seminar for legislators on Promoting Economic Success for Montana Families. The National Conference of State Legislatures and the Annie E. Casey Foundation sponsored the seminar. Topics on asset building for families included the earned income tax credit (see the **Back Page** for additional coverage), individual development accounts, housing, and financial education. Materials from the seminar and links to the organizations are available on the committee's website. Many thanks to Mary Fairchild of NCSL and the Annie E. Casey Foundation and to all the speakers for providing exciting information about how to help support families.

Public participation encouraged... Anyone wishing to participate in the activities of the committee is invited to contact Susan Byorth Fox at (406) 444-3597. Persons wishing to be on the interested persons list may subscribe to receive electronic notices at the committee website or contact Fong Hom at (406) 444-0502 to be placed on the hard copy mailing list.

EDUCATION AND LOCAL GOVERNMENT COMMITTEE

The two subcommittees of the Education and Local Government Interim Committee--Local Government and Postsecondary Education Policy and Budget--met Feb. 23, and the full committee met Feb. 24. Look for summaries of those meetings in next month's issue of *The Interim*.

For more information about the Education and Local Government Committee or the Local Government subcommittee, contact Leanne Kurtz at (406) 444-3593 or lekurtz@mt.gov. For information about the Postsecondary Education Policy and Budget subcommittee, contact Alan Peura at (406) 444-5387 or apeura@mt.gov. Information is also posted on the committee and subcommittees' websites.

LEGISLATIVE FINANCE COMMITTEE

Committee meets in March... The Legislative Finance Committee will meet Thursday and Friday, March 9 and 10 in Room 102 of the Capitol. The Thursday meeting starts at 1 p.m. and the Friday meeting starts at 8. The agenda and staff reports are on the Legislative Fiscal Division website at <http://www.leg.mt.gov/css/fiscal/lfc.asp>. For more information

about the committee, contact Clayton Schenck at cschenck@mt.gov or (406) 444-2986.

The meeting will include the following topics:

- Improving Budget Presentations and Legislative Orientation to the Budget Process
- Department of Corrections Budget Status and Long-Term Solutions
- Judiciary – District Court Program Cost Over-Runs
- Wildfire Suppression Cash Flow
- Pension Plans Unfunded Liability – Where to From Here?
- Energy Price Increases – Impacts on State Budgets
- General Fund Update
- Public School Funding – Where to From Here?
- Energy Cost Assistance Program (LIEAP)– Executive Action/Impact
- Governor's Emergency Powers
- SB 495 Revisited–Purchase of Mineral Rights/Legislative Options
- Management of State Lands–Potential Issues
- Department of Public Health and Human Services Program Issues
 - Budget Status
 - Medicare Part D Implementation
 - HIFA Waiver Status/Potential Impact
 - Promoting Economic Success for Montana Families – Seminar Results
 - Federal Budget Reconciliation Act Changes – Potential Impacts
- Information Technology Draft Strategic Plan Overview
- Department of Justice–Potential Purchase of Montana Crime Lab Facility
- Status of Purchase of Capital Hill Mall
- Status Reports on LFC Interim Subcommittees and Studies

RIT subcommittee meeting March 8...The LFC Resource Indemnity Trust subcommittee will meet on Wednesday, March 8 at 10 a.m. in Room 102 of the Capitol. The purpose of this meeting is to take public comment on the use of RIT interest and resource indemnity groundwater assessment taxes. The subcommittee will develop recommendations for LFC consideration regarding possible changes to the RIT and RIGWA statutes. Previous subcommittee work can be viewed at http://www.leg.state.mt.us/css/fiscal/RIT_Subcommittee.asp.

For more information about the subcommittee, contact Barbara Smith at basmith@mt.gov or at (406) 444-5347.

Subcommittee studying building fund shortfalls, meets in March...The Long-Range Building Cash Program (LRBP) subcommittee met Feb. 6 to begin work on resolving LRBP funding shortages. Subcommittee members are Sen. Mike Cooney, chair, Sen. Rick Laible, Rep. Gary Branae, and Rep. Ray Hawk.

The LRBP cash program is responsible for the major maintenance requirements of state-owned buildings. LRBP cash projects are primarily funded with a distribution of the cigarette tax, and for years funding has been diminishing. Current estimates show that the program is funded at only about 20 percent. The subcommittee is developing recommendations on providing adequate funding for the LRBP for consideration by the LFC.

At the February meeting, subcommittee staff reported on the magnitude of the funding shortage and discussed potential sources of revenue to meet program funding needs. The subcommittee directed staff to analyze two funding concepts. First, staff will analyze funding the program with an additional charge on rental rates for state buildings. Second, staff will analyze the ability to fund the program by establishing a trust with a percent-based charge on all new buildings. The results of the analysis will be presented at the next subcommittee meeting scheduled for 1 p.m. on March 8 in Room 137 of the Capitol. For more information about the subcommittee, contact Cathy Duncan at cduncan@mt.gov or at (406) 444-4580.

STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

Full agenda for March 6 meeting...The State Administration and Veterans' Affairs Committee is scheduled to meet on Monday, March 6 in Room 102 of the Capitol. (This is a change from the original schedule.) The public is invited to attend the meeting and written comments are appreciated.

Gordon Higgins, commissioner of political practices, will discuss initiatives that his office has undertaken in regard to on-line filing of campaign finances and other information. Maj. Gen. Randy Mosley, director of the Department of Military Affairs, will report on activities affecting the Montana Guard and Reserves. Representatives of the Office of the Secretary of State, the Department of Administration, and other state agencies may also provide updates to the committee. Melanie Symons, staff attorney for the Public Employees' Retirement Administration, will update the committee on pertinent MPERA activities, including PERB's progress on recruiting a new executive director.

Committee staff will recap six bill drafts dealing with some aspect of the processes for adopting administrative rules. The committee had requested these drafts at its Nov. 4 meeting and initially reviewed them on Nov. 30.

During the afternoon portion of the meeting, committee staff will present a statutory review and several legislative options regarding the PERB process and actions for open meetings and public participation. This item relates to PERB's recruitment and selection of a new MPERA executive director.

The committee will begin implementing the provisions of HB 2 from the December 2005 special session that require the committee to scrutinize proposals affecting public employee retirement systems. The committee will review a staff draft memorandum that discusses how stakeholders

can inform the committee of their proposals that may affect any of the state's public employee retirement systems. The agenda item also includes a review of a draft, standard form to be used for submitting retirement system-related proposals for committee consideration.

As part of the afternoon agenda, committee staff will present a list of topics related to public employee retirement systems in general and items relevant to the HJR 42 study and mitigating the unfunded actuarially accrued liabilities that exist in four of the retirement systems.

The public and other stakeholders will be given the opportunity to comment on each of the agenda items. The committee may take action on any of the options presented by staff or others, which may include rejecting or proposing options as draft legislation.

The tentative agenda for the March 6 meeting is on the committee's webpage and will be updated as the meeting date approaches. Material to be presented by the committee's staff will also be posted to the webpage as soon as it is available. For additional information, contact the Dave Bohyer, committee staff, at (406) 444-3064 or dbohyer@mt.gov.

ECONOMIC AFFAIRS COMMITTEE

Credit freeze on backburner....Attorney General Mike McGrath's proposed legislation to prevent identity theft by allowing consumers to freeze access to their own credit report, with certain exceptions, met with interest from the Economic Affairs Committee at its Feb. 10 meeting. However committee discussion indicated lack of unanimity on some parts of the proposal.

Rep. Dave Gallik noted that some members of the SJR 38 identity theft work group were troubled by not having the opportunity to review the proposal before the meeting. In December and January the work group had met to discuss aspects of a security or credit freeze, including proposals from the Consumers' Union and the Consumer Data Industry Association. CDIA represents the three major credit reporting agencies that store consumer data and provide reports for a fee. The work group has not weighed in with preferences for any legislation.

The EAC agreed that McGrath's proposed legislation would be discussed further by the work group before the EAC decides whether to introduce a committee bill providing for a security or credit freeze. The work group will meet March 15 at 5:30 p.m. in Room 152 of the state Capitol to consider security freeze proposals as well as what measures might be undertaken for victim restitution or assistance.

Committee urges limited use of social security numbers....Another part of the identity theft discussion included how to handle the use of social security numbers by state agencies. At the request of the SJR 38 work group, the EAC voted to send letters to all elected officials asking them to determine how their agencies are implementing a portion of the federal Privacy Act of 1974. The act requires federal,

state, and local governments to state why they are asking an individual to provide a social security number, whether the disclosure is mandatory or voluntary, and under what authority they are asking. The letter also asks elected officials to review how they handle social security numbers under the "right to privacy" provision of the Montana constitution. The request is an attempt to raise awareness about the importance of requesting social security numbers only when there is a legitimate purpose.

The committee also voted to send two other letters related to the use of social security numbers: one to the Department of Administration urging an end to the use of social security numbers on state employee health insurance cards and another to the Department of Public Health and Human Services requesting DPHHS to seek an exemption from the federal requirement to obtain social security numbers from applicants for recreational licenses.

Committee reviews Medical Board of Examiners rule....After hearing concerns regarding a medical assistant rule being considered by the Board of Medical Examiners, the committee voted to send a letter to the board requesting that the board try to get agreement from proponents and opponents before adopting final rules under 37-3-104, MCA.

The rule, which the board subsequently voted Feb. 17 to adopt with a few changes to deal with comments submitted by the Board of Nursing, implements legislation approved in 2003 designed to regulate work performed by medical assistants. Medical assistants are not separately licensed but work under the direction of a physician or podiatrist. The Montana Nurses Association has questioned the role and training of medical assistants as provided by the rule.

Other committee action....As part of its state agency monitoring duties, the committee heard from State Auditor John Morrison, Workers' Compensation Judge Jim Shea, and Montana State Fund Director Laurence Hubbard.

Morrison said the implementation of HB667, "Insure Montana", is underway. The legislation is designed to reduce the number of people in Montana who don't have health insurance. He also said that his office is hearing from pharmacists who are caught in the middle of Medicare Part D implementation, in part because federal law preempts "prompt-pay provisions".

Judge Shea discussed the impact of common fund workers' compensation cases, which are analogous to class action lawsuits. He said that he is considering appointing a special master to deal with some of the cases, which potentially affect thousands of claimants and several hundred workers' compensation insurers.

Hubbard reported on the status of the Montana State Fund and the Old Fund and provided a handout that shows Montana's medical costs appear to be a key driver that boosts Montana workers' compensation insurance costs higher than that of neighboring states. The committee asked questions about the connections between workers' compensation costs and unemployment; health insurance cost-shifting and competition; regulatory structure; and

demographics.

Meeting scheduled for May....The Economic Affairs Committee will meet May 12 in Room 102 of the Capitol. The next issue of *The Interim* will report on meeting details. The subcommittee working on the HJR 35 study of licensing boards will meet before the EAC meeting, most likely on May 11, although the date is not yet confirmed. For more information on the committee, the identity theft study, or the licensing boards study, please visit the EAC website, or contact Pat Murdo, committee staff, at 406-444-3594 or pmurdo@mt.gov.

ENVIRONMENTAL QUALITY COUNCIL

Attorney general to rule on water rights fee...An attorney general's opinion is being sought as to whether American Indian tribal members are exempted from paying water rights adjudication fees.

At the request of the Environmental Quality Council, House Speaker Gary Matthews asked for the opinion.

The Department of Natural Resources and Conservation exempted tribal members from the requirements of House Bill 22. The agency contends federal law excludes members from the state water rights law even if the members willingly chose to take part in the state-based water rights system.

In January, some EQC members said the agency should have asked for a legal opinion first instead of making the decision on its own.

"The Legislature passed the law. The law is clear," Rep. Jim Peterson, R-Buffalo, said, as quoted by The Associated Press. "The agency essentially made the decision. I don't know if you want to say ignore the law, but that's what happened."

Agency representatives said the move was discussed between DNRC attorneys and the AG office, but no formal opinion was sought because of time constraints.

Council meets in March...The next meeting of the EQC is March 17 at 8 a.m. in Room 102 of the Capitol. For more information, contact Todd Everts at (406) 444-3747 or teverts@mt.gov

House Bill 790 subcommittee poised to make recommendations...Drilling rigs don't appear out of the blue and demand access to private land, representatives of the oil and gas industry told a legislative panel in January. Rather, landowners are often contacted weeks and sometimes months ahead of drilling.

"The notion that a drilling rig 'just shows up unannounced' I would submit, is patently false," said Bob Fisher of Ballard Petroleum Holdings in Billings.

Industry representatives testified before the HB 790 subcommittee at its January meeting in Helena. In previous meetings in Havre, Helena, Sidney, and Sheridan, Wyo., landowners testified about perceived problems with

Montana's Surface Owner Damage and Disruption Compensation statute (82-10-501, MCA). The law details the process by which surface owners are notified about mineral development and compensated by developers.

Current law says notice of drilling operations must be given to the surface owner at least 10 days and not more than 90 days before commencement.

Dave Galt of the Montana Petroleum Association said that the current law was enacted in 1981, and since then the statute has been reviewed many times with the same conclusion: "What we have in place at this time serves the industry and surface owners well."

The panel, which is a subcommittee of the Environmental Quality Council, later voted to recommend that notice of drilling operations be given to the surface owner at least 20 days and not more than 180 days before commencement. Members instructed staff to poll the subcommittee on other issues and work with the committee leaders to draft proposed legislation to be debated at the March 16 meeting in Helena.

For more information, contact Joe Kolman, (406) 444-9280 or jkolman@mt.gov or visit the panel's website by following the "Committees" link on the legislative branch homepage to the EQC.

Agency Oversight subcommittee...The Agency Oversight subcommittee meets March 16 at 8 a.m. in Room 172 of the state Capitol. The agenda includes a variety of topics.

A panel will discuss Superfund pollution sites around the state, including Lockwood and Rimini/Ten Mile.

Dan Bucks, director of the Department of Revenue, Richard Opper, director of the Department of Environmental Quality, and Kevin Harvey, a consultant, will present information on one-stop permitting.

The Department of Environmental Quality and the Department of Agriculture will report on their respective compliance and enforcement activities.

An update of the Montana mine permitting process is also on the subcommittee's agenda.

For more information, contact Todd Everts at (406) 444-3747 or teverts@mt.gov.

Assigned Studies subcommittee continues work on fire study and trust land study...The work group charged with review of fire-related sections of the Montana Code Annotated and with making recommendations to EQC's Assigned Studies subcommittee has only Title 7, chapter 33, left to examine. Bill drafts with the group's proposed changes will be forwarded to subcommittee members as they are completed during the month of April.

Arriving at legislative solutions to problems associated with residential development in the wildland urban interface is a key goal of the group. To better inform the subcommittee on the subject and to elicit direction from the subcommittee, members of the group and others will conduct a panel discussion at the subcommittee's March 16 meeting. The discussion will focus on challenges that residential development in the interface present to wildfire

suppression agencies and possible legislative options.

For more information about the HJR 10 study, contact Leanne Kurtz at 444-3593 or lekurtz@mt.gov.

The Assigned Studies subcommittee will also continue its work on state trust land administrative costs at its March 16 meeting, which starts at 8:30 a.m. in Room 137 of the state Capitol.

Subcommittee staff will also report on a possible study of state land management.

For more information about the subcommittee, contact Krista Lee Evans at (406) 444-1640 or kevans@mt.gov.

MONTANA LEGISLATIVE REFERENCE CENTER

What's happening with the Montana economy? The sites below contain information that will give you some perspective on the workings of the state's economy.

BearFacts, (<http://www.bea.doc.gov/bea/regional/bearfacts/>)...The U.S. Bureau of Economic Analysis regional fact sheets for Montana and counties present detailed information on an area's sources of personal income, including current estimates and growth rates.

Montana Economy at a Glance, (<http://www.ourfactsyourfuture.org/?PAGEID=67&SUBID=139>)...This Montana Department of Labor and Industry website contains featured articles prepared by the department's Research and Analysis Bureau. The website includes recent articles on Montana's gaming industry, the state's graying workforce, gender wage gaps, and a primer on economics.

Local Employment Dynamics <http://lehd.dsd.census.gov/led/>...This U.S. Census Bureau website lists a variety of economic statistics on employment, job creation, wages, and worker turnover. The database can be used to find information by state, county, metropolitan area, and workforce investment area, as well as by industry sector, gender, and age of workers.

State Economic Profiles (<http://www.sba.gov/advo/research/profiles/>)...The economic condition of small businesses in the United States, each of the 50 states, the District of Columbia, and the U.S. territories is illustrated in "Small Business Profiles for the States and Territories", published in 2005. Each state profile contains sections on the following topics: the number of firms, industry composition, small business income, banking, women and minority business ownership, and employment. For Montana specific information go to <http://www.sba.gov/advo/research/profiles/05mt.pdf>.

Who says the Census Bureau is boring?...Does your New Year's resolution include an exercise program? If so,

you could be joining more than 79 million Americans who take a brisk walk, the nation's number one physical activity according to the 125th edition of the *U.S. Census Bureau's Statistical Abstract of the United States, 2006* (<http://www.census.gov/statab/www/>). The abstract includes a list of state rankings in a number of areas (<http://www.census.gov/statab/www/ranks.html>).

Are you a dog lover, or do you prefer the company of cats? The abstract finds America's most popular pet is the dog, with 36 percent of households owning at least one.

Do you know? The Census Bureau does...In 2003, slightly more than 3 million people, 80 percent of whom were female, participated in kickboxing.

Nearly 78 million people read books last year.

More than 68 million people barbecued at least once in the past 12 months and more than 10 million barbecued two or more times a week.

In 2003, American households spent an average of \$40,820 on living expenses, with \$13,430 going for housing; \$7,780 for transportation; \$5,340 for food; and almost \$400 for alcohol.

Bathroom remodeling was highly popular in 2004, with nearly 16 million U.S. homeowners making this improvement.

Wage and salary workers had been with their employer for a median of four years in 2004. About one in ten employees had been with the same employer for 20 or more years.

In 2004, almost 698 million passengers boarded U.S. scheduled airlines, up from 666 million in 2000. Revenue per passenger mile for U.S. scheduled airlines declined from 13.5 cents in 2000 to 11.7 cents in 2004.

For any of your research or informational needs, please contact Lisa Mecklenberg Jackson, legislative librarian, at (406) 444-2957 or ljackson@mt.gov.

REVENUE AND TRANSPORTATION COMMITTEE

Traffic safety...At the committee's February 16 meeting, Jim Lynch, director of the Montana Department of Transportation, took some of us back to our drivers ed days in high school by showing a commercial depicting what happens to unbuckled passengers in an automobile crash. While not as grisly as "Code 30", the message was a grim reminder of the importance of wearing seat belts. The commercial, produced in New Zealand, was part of a traffic safety report that included statistics on the economic loss in Montana associated with traffic accidents, seat belt use, and alcohol-related fatalities.

According to Lynch, the economic loss (e.g., wage and productivity losses, medical expenses, and administrative costs) in Montana because of vehicle crashes was \$806 million in 2004, up 68 percent from 1995. Of the

economic loss in 2004, \$170 million was attributable to crashes in which alcohol was involved. Statistics compiled by the National Highway Traffic Safety Administration indicate that Montana has the highest alcohol-related fatality rate in the nation. On a positive note, the percentage of alcohol-related traffic deaths in Montana declined over the last several months of 2005. While it is too early to tell whether the new law against drinking and driving has had an effect, Lynch is encouraged by the trend.

Lynch's presentation sparked a variety of questions about traffic safety, including road conditions, and renewed the committee's interest in having regular traffic safety updates.

Bidness income taxes...A regular item on the committee's agenda this interim is a review of business income taxes in Montana. Joe Shevlin, a Helena CPA, Mike Green, a Helena tax attorney, and Dan Bucks, director of the Department of Revenue, presented reports on various aspects of business income taxation.

Shevlin discussed the types of business entities including regular corporations and the various kinds of pass-through entities, including small business corporations, general partnerships, limited liability companies, limited liability partnerships, and disregarded entities (a business owned by one person). Except for regular corporations, taxes are paid by the owners, shareholders, or partners of the pass-through entity. Liability, type of business, business plan, assets, access to capital, and tax laws are the kinds of factors taken into account when deciding on the business entity type. Shevlin said that the tax rates for individuals and corporations at both the state and federal level are similar.

Most business taxes in Montana are paid by multistate (or multinational) corporations. Mike Green highlighted some of the issues, including worldwide combined reporting, the definition of worldwide income, the apportionment factors (property, sales, and payroll) used to determine the tax liability of a multistate corporation in a particular state, that these corporations deal with in Montana and other states. He raised the question of whether the three factors contribute equally to the production of income. Many states have moved to weighting sales more heavily in the apportionment of income. Green said that the absence of uniformity of corporate taxation nationwide may create a risk of taxing more than a 100 percent of a corporation's taxable income.

At the committee's December 2 meeting, committee staff presented a background report on corporation income taxes. During the discussion, Dan Bucks was asked about the four or five major problems related to business income taxes. Bucks responded more fully to that question at the February meeting. According to Bucks, abusive tax shelters, corporate tax loopholes, and the use of trusts to hide income reduce the amount of taxes that should be collected in Montana. In addition, unreported income by nonresidents selling property in the state, by certain companies doing business in the state, and by some pass-through entities is a problem, Bucks said.

Montana source income rule revisited...In 2001, the Montana Legislature enacted HB 143 (Ch. 143, L. 2001, how's that for a coincidence) to change the reporting of pass-through entity income. The legislation also included a definition of Montana source income for individual income tax purposes. Late last year, the Department of Revenue proposed a rule to clarify that Montana source income includes, among other things, the gain on a 1031 like-kind exchange when the gain is recognized in a taxable transaction. Gains on like-kind exchanges, which may involve many transactions, are deferred until recognized for federal income tax purposes.

Some people questioned whether the Legislature intended to include the gain from like-kind exchanges as Montana source income or whether the department could reasonably administer the rule. At its December 13 meeting, the committee considered a motion to require the department to prepare an economic impact statement (2-4-405, MCA) on the proposed change; the motion failed on a 6-6 vote. During the December special session, enough petition signatures were obtained to require the department to prepare the economic impact statement.

The committee reviewed the economic impact statement at its February meeting. Two national tax experts, Walter Hellerstein, a professor at the University of Georgia law school, and Vern Hoven, a Washington state CPA, supported the department's position on the rule. Lee Heiman, staff attorney, said the economic impact statement complied with state law. The committee took no action on the statement.

Heiman also reviewed the department's proposed rule on how to determine the taxable gain on the final disposition of 1031 property and the proposed rule to waive penalties and one-half of the interest on gains realized in prior tax years but not reported for tax purposes.

HJR 44 oil and gas property study...As part of the HJR 44 study of the property taxation of oil and natural gas property, the committee has invited representatives of several production companies to describe their operations in Montana. At the February 17 meeting, Bob Jacobs, senior vice president of Encore Acquisition Co., described the company's oil and gas operations in the Cedar Creek anticline. Encore is the top oil producer in Montana, with about 5 million barrels of oil produced in 2005. The company produces oil in several Montana counties and also in North Dakota.

Patrick Montalban of the Northern Montana Oil and Gas Association described the operations of independent oil and gas producers. He said that some independent producers acquired former Montana Power Co. property and that the central assessment of this property would adversely affect these producers.

Jeff Martin, committee staff, presented a report on how other oil and gas producing states assess for property tax purposes oil and gas production equipment, gathering lines, and transmission lines.

Other committee business...The committee voted to

request a bill draft to clarify and revise how tax and revenue information is transferred from the Department of Revenue to the Legislative Fiscal Division and the governor's budget office for revenue estimating purposes.

Terry Johnson, LFD, presented an update on general fund revenue collections.

Next meeting in April...The committee is scheduled to meet April 28. For more information, contact Jeff Martin, committee staff at (406) 444-3593 or jmartin@mt.gov.

THE BACK PAGE

GOOD NEWS AT TAX TIME: THE EARNED INCOME TAX CREDIT

By Susan Byorth Fox
Legislative Research Analyst

We generally do not think of tax time as bringing good news. Still, with taxes being a certainty, one must look for the bright side. Taxes are not my bailiwick, but from a children and families perspective, there is a bright side. Recently, the National Conference on State Legislatures provided technical assistance to Montana legislators that focused on promoting economic success for families. One strategy is encouraging people to claim the federal Earned Income Tax Credit.

WHAT IS THE EARNED INCOME TAX CREDIT?

The EITC is a refundable federal income tax credit for working families and individuals with lower incomes. Congress enacted the tax credit in 1975 to offset the burden of social security taxes and to provide an incentive to work (IRS). The EITC is the only federal refundable tax credit and is the only tax credit "that does not require the individual to pay for a good or service, but instead provides an incentive to earn income" (Dickert-Conlin, 2005). It also differs from other programs for persons with lower income in that it is administered through the income tax code, and the only eligibility process is having earned income and filing a tax return (Dowd, 2005).

This article provides legislators with resources to help educate and encourage families to claim the EITC. The credit assists working families who are struggling to make ends meet. Legislators can help families avoid the pitfalls of high interest rate refund loans by providing information about the availability of free tax preparation. Local and website resources are listed below to help you and your constituents find out who is eligible and where to find free tax help.

WHO IS ELIGIBLE AND HOW MUCH IS THE CREDIT?

More than 25% of working families in the U.S. earn less than \$36,000 a year (NCSL, 2005). In Montana, 50% of the state's households earn \$34,105 a year or less (Kids Count, 2005). For the 2005 tax year, taxpayers with earnings up to \$35,263 may qualify for an EITC (Dickert-Conlin, 2005). In 2003, 74,495 Montana tax returns claimed the credit, or about 17.2% of the total returns filed. Although that was the highest percentage of returns claiming the credit, it is likely that many more would qualify given the state's low median income.

The average refund in 2003 was \$1,624 for each return, totaling more than \$120 million paid to Montana families (LFD, 2006). The amount of the credit depends on the number of children in the family and the individual or family annual earned income. In 2004, the amount ranged from

\$390 for individuals with no children up to a maximum credit of \$4,300 for families with income below \$34,458 (NCSL, 2005).

Research shows that families use the credit to pay rent and utilities, create savings accounts, invest in higher education, and reduce debt. The EITC lifts more families out of poverty than any other government program, yet many who qualify do not claim the credit (NCSL, 2005). This money provides security for the family and stays in the communities.

Not every one who qualifies for the credit claims it. Some filers do not know about it, some don't file a return because of low earnings, and some fear losing eligibility for other benefits. State outreach campaigns are effective ways to let families know about the credit and to let them know that even if they do not have to file a return, they may qualify for a refund if they do file. In most cases, EITC payments will not be used to determine eligibility for Medicaid, Supplemental Security Income (SSI), food stamps, housing, or most TANF payments.

BUYER BEWARE

Not only do families not always claim the credit that they would qualify for, many filers do not receive the full credit if they use a commercial tax preparer. The preparer may encourage the filer to take out a refund anticipation loan that comes with a high interest rate. The high interest rate reduces the amount of the refund families receive. According to a January 2004 report on refund loans by the National Consumer Law Center and the Consumer Federation of America, the average refund anticipation loan was \$90, but with tax preparation and electronic filing fees, the amount of the refund was reduced by \$200 (NCSL, 2005). Although many families learn of the credit through their tax preparer, data on 2001 tax filings in northcentral Montana showed that in some communities, more than 50% of the households filing use the rapid refund (Augere, 2006), making it appear that certain communities are targeted and may benefit from more outreach.

WHAT STATE LEGISLATORS CAN DO TO HELP OUTREACH EFFORTS

The NCSL offers the following ideas that legislators can use for assisting people who qualify for the credit:

- connect with your state or local outreach campaign, or create your own. Many neighborhoods, cities, and states already have a campaign Tax Help Montana and I Can! E-file are here in Montana (websites below). See also <http://www.tax-coalition.org/buildcoal.htm>.
- include outreach materials in legislative newsletters and on websites (provide links to the sites from this article);
- talk about EITC at town hall meetings or other constituent events;

- send emails or letters to constituents about the EITC;
- involve local businesses in EITC outreach; and
- visit your free tax preparation program and invite constituents and reporters. To find a site near you go to <http://www.montanafreefile.org> or call 1-800-666-6124, ext 31 (Montana Legal Services).

In addition, NCSL offers the following state policy options :

- fund outreach campaigns and establish performance benchmarks, such as increasing the percentage of filers or decreasing the number of refund anticipation loans;
- ensure consumer protections are in place, such as requiring that consumers receive full disclosure on all fees and costs, providing for and supporting consumer education efforts, and adopting and enforcing licensing standards and regulations; and
- create a state earned income credit; 18 states offer an earned income credit in addition to the federal credit. (NCSL, 2005)

Some of the lessons learned about outreach are that campaigns must be broad-based to reach the diverse group eligible for earned income tax credits. Campaigns can increase public awareness by creating flyers and posters, and by working with organizations that serve eligible populations. Outreach materials and toolkits are available through national organizations such as the National League of Cities and the Center on Budget and Policy Priorities. Free tax preparation is also an important component of outreach. Without alternatives to high-priced tax preparation and high interest loans, individuals may not apply for or receive their refunds (NCSL, 2005).

LOCAL RESOURCES FOR MONTANANS

In an exciting opportunity this tax season, Montanans qualifying for the EITC will be able to file their federal and state tax returns for free online at <http://www.icanefile.org> and obtain their refund in as little as 10 days. This service can be accessed from a home Internet connection or from public libraries or social service agencies. Another resource is the Montana Free File website at <http://www.montanafreefile.org>, which lists other local free tax preparation sites. The Montana Legal Services Association sponsors a website MontanaLawHelp.Org, which has specific information on the EITC. The IRS Volunteer Income Tax Assistance sites ensure that taxpayers have access to tax preparation services, and Montana has one site in Missoula.

WEB RESOURCES

I-CAN! EIC Free (state and federal) Tax Software: <http://www.icanefile.org>

Montana Free File: <http://www.montanafreefile.org>

Montana Law Help: <http://MontanaLawHelp.Org>

National Community Tax Coalition: <http://www.tax-coalition.org/buildcoal.htm>

Internal Revenue Services: <http://www.irs.gov/individuals/index.html>

National Conference of State Legislatures: <http://www.ncsl.org/statefed/welfare/eitc.htm>

National League of Cities: <http://www.nlc.org/Issues/> (see Family Economic Success)

Center on Budget and Policy Priorities: <http://www.cbpp.org/pubs/eitc.htm>

The Brookings Institution: <http://www.brookings.org> (keyword: EITC)

Links are also on these legislative branch websites: Children, Families, Health and Human Services Interim Committee: http://leg.state.mt.us/css/committees/interim/2005_2006/child_fam/default.asp

Promoting Economic Success for Montana Families (links to Power Point presentations): http://leg.state.mt.us/css/committees/interim/2005_2006/child_fam/promoting.asp

SOURCES

Augere, Shannon. "Tax Help Montana." Power Point Presentation, January 26, 2006.

Dickert-Conlin, Stacy, Katie Fitzpatrick, and Andrew Hanson. (2005). Utilization of Income Tax credits by Low-Income Individuals. National Tax Journal. 58 (4), 743-785.

Finzel, Rachel. "Closing the Income Gap: How Legislators Can Help Working Families Claim Federal Tax Credits". National Conference of State Legislators. July 2005.

Internal Revenue Service, U.S. Department of Treasury. "It's easier than ever to find out if you qualify for EITC" (<http://www.irs.gov/individuals/article/0,,id=96406,00.html>)

Montana Kids Count. 2005 Montana Kids Count Data Book. Bureau of Business and economic Research, University of Montana. 2005.

Montana Legislative Fiscal Division, "Earned Income Credit - Montana." 2006.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
March 2006						
			1	2	3	4
5	6 Legislative Audit Committee, Room 172, 8 a.m. State Administration and Veterans' Affairs Committee, Room 102	7	8 Resource Indemnity Trust subcommittee, Room 102, 10 a.m. (Legislative Finance Committee) Long-range Building Program Funding subcommittee, LFC, Room 137, 1 p.m.	9 Legislative Finance Committee, Room 102, 1 p.m. Fiscal note work group, Room 137, 8:30 a.m. (Legislative Council and Legislative Finance Committee)	10 Legislative Finance Committee, Room 102, 8 a.m.	11
12	13	14	15 SJR 38 Identity Theft work group, Room 152, 5:30 p.m.	16EQCsubcommittees: HB 790 Oil and Gas Study Agency Oversight, Room 172, 8 a.m. Assigned Studies, Room 137, 8:30 a.m.	17 Environmental Quality Council, Room 102, 8 a.m.	18
19	20	21	22	23	24 Legislative Council, Room 137, 9 a.m.	25
26	27	28	29	30 Children, Families, Health, and Human Services Committee	31 Children, Families, Health, and Human Services Committee	

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
April 2006						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28 Revenue and Transportation Committee, Room 137	29
30						

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